

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 770 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and
MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GHELA @ JAYANTILAL CHANABHAI SINGRAKHIA

Versus

STATE OF GUJARAT

Appearance:

MR AVINASH K MANKAD for Petitioner
MR. Y.F. MEHTA, ADDL.P.P for Respondents.

CORAM : MR.JUSTICE N.J.PANDYA and

MR.JUSTICE H.L.GOKHALE

Date of decision: 10/01/97

ORAL JUDGEMENT (per N.J. Pandya, J)

The accused appellant had faced trial under Section 302 of the I.P.C. in Sessions Case No. 104 of 1987 in the Court of learned Additional Sessions Judge, Mehsana. He came to be convicted by an order dated 30.7.1988. The case against the accused-appellant was

that on the night of 20.5.1987 at 11.15 p.m. Rasidali Pathan was given knife blow on account of some verbal quarrel about food between the accused and the deceased.

2. There are three eye witnesses to the incident. One is widow Faridabibi PW-3 at Exh. 21 who was the complainant. The second witness is Sultanhusain Abdul Gafar PW-4 at Exh. 22 and the third witness is Vijaykumar Ramchandra PW-8 at Exh. 29, page 66.

3. The first two witnesses are closely related to the deceased and they narrated only about the incident as having taken place. Summary of the incident is that on the night of 20.5.1987 as usual the family of the deceased was to draw food from common kitchen run by their employer running an Amusement Park. There are about 18 to 20 employees who are taking meals. Like those, the deceased was staying with his wife and children and therefore had chosen to get the food from common mess bringing to the tent and eat it there. For this purpose, the said Sultanhusain was sent. When Sultanhusain returned with food and the deceased found that the quantity of food is much less particularly dal and rice. When less quantity of dal is given, he scolded his step-son Sultanhusain and then in company of Sultanhusain went in search of the cook Vijaykumar Ramchandra PW-8.

4. Vijaykumar Ramchandra at that time was sitting in the place meant for running mini train in the amusement park. He had taken the matter silly. It was only a joke. There is additional dal lying in the kitchen. The deceased may collect it. At that time the accused intervened and verbal duel between him and the deceased started. It seems that there were not keeping good relations with each other. However, this was ended by intervention of the other persons including Vijaykumar Ramchandra PW-8. At that time Faridabibi, the complainant, having come there and she picked up the quarrel with the accused and told him to be "pimp" and said that why is he intervening in a matter between Vijaykumar, the cook and the deceased. Just having come out of a quarrel because of the intervention of the others, on these abuses being hurled at him, the accused went wild, rushed to the kitchen and came out with the weapon dagger and by giving one blow caused the death of Rasidali Pathan.

5. The second part of quarrel wherein Faridabibi played part gave that abuses to the accused is not talk of either by Faridabibi or by the witness. This has been stated by PW-8, Vijaykumar only. This being the

prosecution case, in our opinion, the learned Advocate Mr. Mankad is right in submitting that this was an unintended fatality caused by hasty action on the part of the accused and therefore no doubt, he might be guilty but not for an offence punishable under Section 302 of the I.P.C. and we state that it could come under Section 304 Part II. Once that position as brought from the deposition of prosecution witness 8, Vijaykumar, is accepted, in our opinion, this will be the position and therefore we partly allow the appeal. The order of conviction and sentence passed by the learned Addl. Sessions Judge, Mehsana, dated 30.7.1988 under Section 302 of I.P.C. is set aside. In its place, the accused is convicted under Section 304 Part-II. So far as the sentence is concerned, the period that the accused-appellant has undergone as an undertrial prisoner and as a convict in jail since May 1987 is considered enough and he is ordered to be set at liberty forthwith, if not required for any other purpose.

6. Before parting with the matter, we would like to express our view also being in agreement with the sentiments expressed by our learned brother Justices K.J. Vaidya and K.R. Vyas in the matter of RANIYA BHIMA BHIL AND ORS. VS. STATE OF GUJARAT reported in 1996(1) G.L.H. 495. While dealing with the Criminal Appeal No. 474 of 1991 and Criminal Appeal No. 474-A of 1991 they have sadly noted the fact that while subscribing to the idea of providing the adequate legal aid as per the provisions of the code to undefended accused, the State is making provision but the amount of fee prescribed for the purpose by the State is hopelessly inadequate and requires upward revision.

7. The fees were fixed many years back and same was the position with regard to the Law Officers of the State appearing on prosecution side. Luckily the State has recognised the adequacy of payment to the Law Officers. Since Financial Year 1992-93 fees have been revised for the prosecutors appearing as Law Officers in the court on behalf of the State.

8. The passage to be found in the aforesaid judgement in paragraph 15 can fruitfully be quoted not only by way of immediate reference but to highlight the position that is prevailing today as very eloquently noted by those two judges.

"Para 15 - While concluding and before parting with this judgement, three outstanding things deserve special mention. Firstly, the performance of the learned Trial Judge Mr. M.P.

Shah. Taking a special note of the industry put in, clarity and the way in which the evidence has been appreciated making elaborate effort to separate the grain from chaff by the learned Trial Judge, we would be simply failing in our duty, if we fail to place on record the word of appreciation of the dexterous manner in which the varied, complex and complicated evidence came to be appreciated by him while reaching ultimate conclusion.!! It is just Excellent, Congratulations, Keep up. Incidentally, it is recommended that, be it at the stage of admission or final hearing, whenever the special mention is needed to be made about the perverse or exceptionally good quality of judgement, the remarks in said regard by the concerned learned Judge be immediately placed on the service record, so as to be easily avail on date regarding performance of the Judge for due promotion.!! Secondly, the performance of young learned Advocate Mr. Jamshed Pardiwala (Appointed). It must indeed be stated to his credit that though these two appeals fail, yet at the same time, taking into consideration the fact at the shortest possible notice, the way in which Mr. Pardiwala burning his midnight oil put his industry with touch of all maturity and meticulousness at his command in quite bulky, labourious and otherwise tedious matter and that too in this appointed appeal, was simply idyllic, impressive and an object lesson to any young lawyer how even in appointed matter with all sincerity and devotion the heart could be put in and appeal could be conducted. This indeed merits all deserving compliments. Further the hearing of these appeals commenced on 2.8.1995 and it went on taking in all ten days barring some time consumed by daily admissions. Not only that but Mr. Pardiwala of his own has submitted typed charts, xerox copies of the Supreme Court judgements, etc. Under the circumstances, the nature and the record of the case and the industry put in by Mr. Pardiwala not only deserves special compliments but we feel he should surely be suitably compensated by awarding adequate fees. Thirdly, the gross inadequate out-dated standard of fees given in appointed matters!! In appointed matters we are informed that the learned advocates so appointed are paid Rs. 100/- only per matter by virtue of a circular issued by the then Government of Bombay,

Home Department Resolution No. LD/33-C-III, dated 20.8.1957 irrespective of the consideration of importance of matter and for how many days it was argued. Indeed, much waters have flown the aforesaid circular issued by Bombay Government!! The value of rupee thereafter has fast shrunk, dwindled and stands much depreciated after 1957!! By now even the fees scale in the Office of the GP & PP have been revised upward considerably. We have also been further informed at the bar that the State of Maharashtra has also subsequently substantially revised upward the fees-scale in the appointed matter. In this view of the matter, in our opinion, Rs. 100/- in an appointed matter being more or less quite unrealistic and irrational rather nothing but the mockery and accordingly we deem it proper to recommend the State Government to graciously and suitably enhance the same at the earliest opportunity giving it top most time bound emergent consideration. The reason is when the Court is called upon to administer justice, the same is always done with the active and able assistance rendered by the learned Advocates. It has been reported to us that many advocates these days refuse to take the appointed matters. In all probability because of meagre amount of Rs. 100/- only which is paid to them. Once a while when such matters are accepted in Rs. 100/- only some learned Advocate so appointed fails to put his heart to render the desirable assistance to the Court to the greatest prejudice of poor accused languishing in jail!! In fact when an advocate accepts the appointed brief, obliging us we cannot be oblivious to the fact that to that extent, his personal work also suffers for as many as days final hearing continues, and still if an advocate is good enough inspired by the sense of duty, if he accepts the appointed brief, then in that case, his good sense of duty should not be taken at discount and accordingly, it is the duty of the State Government to see that his services are properly compensated. In this view of the matter, we request the State Government to consider this aspect at the earliest and do the needful so as to revise the fees scale of the learned advocates in the appointed matters. In the present case for the reasons already stated above, we recommend the State Government to sanction at least Rs. 2500/towards fees to Mr. J.B. Pardiwala, at the earliest."

After this judgement was rendered on 6.9.1995 efforts were made by the learned President of the Gujarat High Court Advocates Bar Association and he had addressed a letter to the all concerned including the learned Chief Justice of this court appending to it a copy of this judgement and adding his authoritative voice as head of the Bar Association requesting the Government to upwardly revise the table of remuneration.

While this is being dictated, we learnt from the learned President of the Bar Shri Shethna that so far as he has not received any response from the State Government. It is therefore high time that something is being done and therefore we decide to issue notice to the State Government in its legal Department and in its Finance Department as also to the learned Advocate General so that after hearing the parties, some time bound program, if necessary, can be fixed. Accordingly, notice is to be issued to the State Government through its Secretary, Legal Department, as also to the State Government through its Secretary, Department of Finance as also to the learned Advocate General of the State Government is made returnable on 27.1.1997. The notice will be served through Liaison Department of the State Government situated in the premises of the High Court. Learned President of the High Court Advocates Bar Association Shri K.J. Shethna is requested to remain present on that day and he may in the meantime prepare sufficient number of copies of the letter so that it can be handed over to all the concerned persons on that day, if necessary. So far the order, after the operative portion, says with regard to the remuneration to the appointed lawyers be treated as a separate proceedings and that paragraphs will be taken out and given to the office separately for preparing proceeding of separate Special Criminal Application initiated by the court suo motu.

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